

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHRIS CUFFARO,

Plaintiff,

Docket No.

- against -

JURY TRIAL DEMANDED

BURNING AIRLINES, INC.,

Defendant.

COMPLAINT

Plaintiff Chris Cuffaro (“Cuffaro” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Burning Airlines, Inc. (“Burning Airlines” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 and 1202 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Nirvana, owned and registered by Cuffaro, a California based professional photographer. Accordingly, Cuffaro seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New Jersey.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Cuffaro is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 449 1/2 North Sycamore Avenue, Los Angeles, CA 90036.

6. Upon information and belief, Burning Airlines is a domestic business corporation duly organized and existing under the laws of the State of New Jersey, with a place of business at 18 Pannick Drive, Hamilton, NJ 08610. Upon information and belief Burning Airlines is registered with the Department of State Division of Corporations to do business in the State of New Jersey. At all times material, hereto, Burning Airlines has owned and operated a website at the URL: <https://burningairlines.com> (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Cuffaro photographed Nirvana (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Cuffaro is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-063-717 and titled "Nirvana alley 7.22.1991.jpg." See Exhibit B.

B. Defendant's Infringing Activities

10. Burning Airlines sold Nirvana based T-shirt merchandise on their Website. See URL <https://burningairlines.com/nirvana/nirvana.html>. The merchandise prominently featured

the Photograph. Screenshots from the Website page that sold the merchandise are attached hereto as Exhibit C.

11. Burning Airlines did not license the Photograph from Plaintiff for its article, nor did Burning Airlines have Plaintiff's permission or consent to publish the Photograph on its Website or use it to create T- shirts or other merchandise relating to the image.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Burning Airlines infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Burning Airlines is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT
(17 U.S.C. § 1202)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Upon information and belief, Defendant copied the Photograph from Cuffaro's personal website URL: <https://cuffarohits.com/nirvana-2/> which contained a watermark credit on the Photograph stating "Cuffarophoto.com" and placed it on its merchandise and website without credit.

19. Upon information and belief, intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

20. The conduct of Burning Airlines violates 17 U.S.C. § 1202(b).

21. Upon information and belief, Burning Airlines's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

22. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Burning Airlines intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. Burning Airlines also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

23. As a result of the wrongful conduct of Burning Airlines as alleged herein, Plaintiff is entitled to recover from Burning Airlines the damages, that he sustained and will sustain, and

any gains, profits and advantages obtained by Burning Airlines because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

24. Alternatively, Plaintiff may elect to recover from Burning Airlines statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Burning Airlines be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Burning Airlines be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: September 20, 2018
Clifton, New Jersey

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